INFORMATION BULLETIN 2010-6

June 29, 2010

Fiscal Measures Relating to Individuals and Businesses and Pertaining to Consumption Taxes

This information bulletin provides an in-depth description of the changes, clarifications and application details of certain fiscal measures. These measures concern, among others, the extension of the tax credit for the construction and major repair of public access roads and bridges in forest areas, the qualification of certain expenses for the refundable tax credit for film production services, the temporary increase of the rate of capital cost allowance applicable to a pipeline used to transport oil or natural gaz, the implementation of rules for the transfer, into a registered education savings plan that offers the Québec education savings incentive, of contributions paid in a regime that does not offer this incentive, and the payment of the tax on insurance premiums in respect of insurance for replacement of a new or used vehicle.

For information concerning the matters dealt with in this information bulletin, contact the Secteur du droit fiscal et de la fiscalité at 418 691-2236.

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Finances Québec

Fiscal Measures Relating to Individuals and Businesses and Pertaining to Consumption Taxes

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1. MEASURES CONCERNING INDIVIDUALS

1.1 Implementation of special rules for the transfer in 2011 of contributions paid in RESPs that do not offer the Québec education savings incentive and other changes

To encourage saving for a child's post-secondary education, funds set aside in registered education savings plans – or RESPs as they are commonly called – accumulate free of tax up to the time the child (the beneficiary of the plan) undertakes recognized post-secondary studies.

To further encourage families to save for their children's education starting at a very early age, the tax system stipulates the payment, consisting of a refundable tax credit, of a Québec education savings incentive (QESI), where contributions are made, after February 20, 2007, in a RESP for the benefit of a child residing in Québec.

This tax credit, which is paid directly into the RESP at the request of the plan trustee, can reach $3 600 per child, on a cumulative basis, i.e. 50% of the maximum grant paid under the Canada Education Savings Act. The government assistance is in addition to the income accumulated in the plan as a result of private savings, eventually to be paid to the child as an education assistance payment.

Where the financial assistance relating to the QESI is paid in a family RESP, i.e. a plan with several beneficiaries, all related to the subscriber by blood or adoption, it can be used to fund the studies of any of the beneficiaries, provided no beneficiary receives more than $3 600 on account of the QESI.

However, in some circumstances, all or part of this financial assistance may be recaptured through special taxes, for example, in the case of an unauthorized transfer of property held in an RESP.

In general, the QESI provides families with financial assistance that corresponds, for a given year, to 10% of the first $2 500 paid in the year on account of contribution to an RESP for the benefit of a child under age 18. However, the applicable rate is increased for children of low- and middle-income families regarding the first $500 of annual contributions.

For the QESI to be paid, for a given year, to a trust governed by an RESP, the plan trustee must submit its request to Revenu Québec no later than the 90th day following the end of the year or within a longer period considered reasonable, but that may not exceed December 31 of the third year following the one for which the QESI is requested. However, to be authorized to submit a request, the plan trustee must first have entered into a QESI participation agreement[1] with the Minister of Revenue.

1 For this agreement to be fully applicable, a second agreement must be entered into between the plan promoter and the Minister of Revenue.

To date, most large suppliers of RESPs in Québec have already requested the QESI for contributions paid in 2007, or have committed to do so by the December 31, 2010 deadline. To reflect the fact that some RESP suppliers will not meet the deadline and to prevent the QESI in respect of the contributions paid into the plans they administer from being lost, special rules for the transfer of property held in these plans will be put in place in 2011.

Moreover, changes will also be made to certain rules regarding the recapture of the QESI by means of special taxes.

❑ Special rules for the transfer in 2011 of contributions paid in RESPs that do not offer the QESI

An exceptional provision will be put in place to maintain rights to the QESI in respect of contributions paid in an RESP that governs a trust residing in Québec,[2] if such plan, on December 31, 2010, still does not offer the possibility of benefiting from the QESI.

More specifically, the contributions paid, after February 20, 2007 and before January 1, 2011, in an RESP governing a trust that resides in Québec[3] whose trustee has not submitted, before January 1, 2011, any request in relation to the QESI in the manner stipulated for one of the RESPs regarding which he acts in that capacity, will give rise to the QESI provided the following conditions are satisfied:

— all the property in the plan in which the contributions were paid is transferred, during 2011, to another RESP (transferee plan);

— no later than December 31, 2010, the trustee of the transferee plan entered into a QESI participation agreement and, as stipulated in the agreement, requested the QESI for RESPs in respect of which he acted in that capacity;

— the transfer of property to the transferee plan is an authorized transfer as this notion is understood in the current tax legislation;[4]

— no later than March 31, 2012, the trustee of the transferee plan submits to the Minister of Revenue, in the manner stipulated in the QESI participation agreement, a request relating to the QESI, for the amount of eligible contributions attributable to each of the years prior to 2011 at the end of which the beneficiary of the plan resided in Québec, as if the contributions paid, after February 20, 2007 and before January 1, 2011, in the transferor plan had been paid, up to the amount transferred on that account, to the transferee plan.

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2 Including a trust that resides in Canada outside Québec and whose trustee is a person that has an establishment in Québec.

3 See preceding note.

4 *Taxation Act*, R.S.Q., c. I-3, sec. 1029.8.136, par. 2.

❑ Change to certain rules regarding the recapture of the QESI by means of special taxes

■ Special tax for an unauthorized transfer

In general, the rules relating to RESPs allow all or part of the property in such a plan (transferor plan) to be transferred to another RESP (transferee plan).

However, if the transferor plan has already received payments of account of the QESI, special conditions, contained in the notion of authorized transfer, must be satisfied before part of the property held in the plan that is reasonably attributable to the QESI can be transferred to another RESP.

Where the conditions stipulated by the notion of authorized transfer are not satisfied, the balance of the QESI account of the transferor plan immediately before the transfer must generally be repaid in full by means of a special tax payable by the plan trust, even if the transfer is only partial.[5]

Currently, for a partial or total transfer of the property held by an RESP participating in the QESI to a transferee plan to be authorized, the following conditions must be satisfied:

— a beneficiary of the transferee plan:

  — either was, immediately prior to the transfer, a beneficiary of the transferor plan;

  — or had not reached, at the time of the transfer, age 21 and was, immediately prior to the transfer, the brother or sister[6] of a beneficiary of the transferor plan;

— at the time of the transfer:

  — either the transferee plan had only one beneficiary or, if it had more, they were all brothers and sisters;

  — or no amount on account of the increase in the QESI granted in respect of children of low- or middle-income families had been received by the trust governed by the transferor plan;

— the transferee RESP satisfies the registration conditions stipulated by the tax legislation that apply to education savings plans subscribed after December 31, 1998.[7]

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5 An amount less than the entire balance of the QESI account may be payable on account of the special tax where the transferor plan has suffered losses.

6 For the purposes of the notion of authorized transfer, the words brother and sister of an individual mean a person who is a sibling of the individual as well as a person who is the son or daughter of the spouse of the father or of the mother of the individual.

7 These conditions are restrictive measures designed to limit abuses observed in the past. On the one hand, family plans subscribed after December 31, 1998 must prohibit the addition of beneficiaries age 21 or over and, on the other, a plan subscribed after December 31, 1998 must limit education assistance payments in the case where the length of studies is less than 13 weeks.

The purpose of these conditions is to ensure that the QESI benefits the same beneficiary as the one for which it was initially paid or members of his family.

To maintain the integrity of the rules relating to the QESI, the legislation will be amended to stipulate that a QESI participation agreement must also apply, at the time of the transfer, in respect of the transferee plan[8] for a transfer made after the date of publication of this information bulletin to be considered an authorized transfer, both for the purposes of determining whether a special tax becomes payable following a transfer and for the purposes of determining the amount of the QESI that may be paid to the trust governed by the transferee plan for the year of the transfer.

■ Special tax in the event the aggregate cap on the QESI is exceeded

An individual must include, in calculating his income for a year, any amount he received in the year on account of an education assistance payment.

In addition, where the total of the amounts an individual received on account of the portion of an education assistance payment attributable to the QESI exceeds, during a given year, the cumulative cap of $3 600, the individual must pay, for such year, a special tax equal to such excess. This special tax is payable generally no later than April 30 of the year following the given year.[9]

However, the amount of this special tax may be deducted in calculating the individual's income for the taxation year during which he paid it. This deduction acknowledges that an individual should not have been taxed on an amount he was required to reimburse.

The fact that the special tax is payable in the year following the year for which an individual must include, in calculating his income, any excess QESI amount received in the form of an education assistance payment does not enable, in all cases, the individual to recover the amount of tax paid that may reasonably be attributable to the inclusion of the excess QESI.

Accordingly, to make the tax system fairer and simplify its application, the tax legislation will be amended to stipulate that, as of taxation year 2010, an individual may deduct, in calculating his income for a given taxation year, the amount of the special tax in the event the aggregate QESI cap is exceeded that he must pay in respect of such year.

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8 See note 1.

9 However, if the individual died after October 31 of the given year and before May 1 of the following year, the special tax is instead payable the day that follows six months after his death.

1.2 Measures relating to the administration and payment of the solidarity tax credit

To better meet the needs of low- and middle-income households, it was announced, in the 2010-2011 Budget Speech,[10] that the refundable tax credit for the Québec sales tax (QST), the property tax refund and the refundable tax credit for individuals living in a northern village would be grouped into a single refundable tax credit – the solidarity tax credit.

Essentially, this new tax credit, which provides more assistance to households to mitigate QST- and housing-related costs in particular, will be paid, as of July 1, 2011, on a monthly basis so that the tax assistance is more closely linked to the needs it seeks to meet.

In many ways, the solidarity tax credit differs from the other refundable tax credits paid by Revenu Québec. The key feature that characterizes this new tax credit relates to the fact that it must be claimed for a future period and not after the end of a taxation year.

In addition, while this tax credit, like the other tax credits intended for low- and middle-income households, reduces as family income rises, it differs in that the family income that must be included to determine the amount to be paid for a given month is, for January to June of a year, that calculated for a taxation year that ended December 31 of the second preceding calendar year and, for July to December of a year, that calculated for the taxation year that ended December 31 of the preceding calendar year.

Accordingly, to better adapt the rules relating to the administration of refundable tax credits and those regarding their determination to the specific features of the solidarity tax credit, various amendments will be made to the tax legislation.

❑ Notice of determination of the tax credit

Where an individual has, in the manner and within the deadline stipulated, applied to receive the solidarity tax credit,[11] the Minister of Revenue will advise him, through a notice of determination, of the amount he is entitled to receive on account of this tax credit for each month included in the 12-month period beginning July 1 of a calendar year.

Where the amount for a given month included in the 12-month period that begins July 1 of a calendar year is revised or where a change in situation results in changing the amount, a new notice of determination will be sent by the Minister of Revenue to the individual covered by the new determination.

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10 Ministère des Finances du Québec, *2010-2011 Budget – Additional Information on the Budgetary Measures*, March 30, 2010, p. A.8 to A.24.

11 See preceding note, p. A.11 and A.12. In this regard, it was announced that for an individual's claim regarding a given month to be validly considered by the Minister of Revenue, it must be presented no later than the eleventh month following the given month. However, the Minister of Revenue may at all times extend the deadline.

Given that the parameters of the solidarity tax credit will be automatically adjusted on January 1 of each year,[12] a legislative presumption will be established so that any notice of determination sent to an individual before the end of a given calendar year and bearing on the months included in the following calendar year is deemed to contain, if applicable, the additional amount determined regarding the individual pursuant to the adjustment of the parameters of the tax credit.

❑ Amount less than $2 for a given month

In the case where the amount on account of the solidarity tax credit determined for a given month is less than $2, such amount will not be paid during such month. However, if, during the 12-month period that begins July 1 of a calendar year in which such month is included, either an amount equal to or greater than $2 must be paid for a month later than the given month, or the total of the unpaid amounts added to the amount that must be paid for a month later than the given month reaches at least $2, such amount will be paid during such later month.

❑ Suspension of payments

The Minister of Revenue may require that an individual to whom he intends to pay or to whom he pays the solidarity tax credit provide him with documents or information to verify whether he is entitled to the tax credit or the amount to which he is entitled.

Should an individual omit to provide the documents or information required by the Minister of Revenue within 45 days following the date they were requested, the Minister of Revenue will be authorized to suspend payment of the solidarity tax credit that was determined for the individual until the required documents or information are provided.

❑ Allocation of the tax credit to the payment of a debt

Under the Act respecting the ministère du Revenu, where a person who is entitled to a refund pursuant to the application of a fiscal law also owes an amount under such a law or is on the point of owing such an amount, the Minister of Revenue may allocate such refund to the payment of the person's debt, up to the amount of such debt, and notify him accordingly. This refund may also be allocated to the payment of any amount that such person owes the State under various other laws.[13]

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12 For the months from July 2011 to December 2012, the value of all the parameters is known, except for the reduction threshold, which is automatically indexed January 1, 2012.

13 For example, the Individual and Family Assistance Act, the Act respecting financial assistance for education expenses and the Act respecting the Société d'habitation du Québec.

To take the objectives of the solidarity tax credit into account, only 50% of the amount determined on account of this tax credit, for a given month, in respect of an individual who is a recipient, for such month, of last-resort financial assistance[14] may be allocated to the payment of a debt of such individual to the State, provided his status as a recipient was brought to the attention of the Minister of Revenue at least 21 days before the scheduled date for payment of such amount.

❑ Determination of interest

■ Interest earned

Where, for a given month, an amount on account of the solidarity tax credit is paid to an individual or applied to another of his obligations, interest will be paid to him on such amount for the period ending the day of such payment or such application and beginning on whichever of the following dates is later:

— the sixth day of the given month;

— the forty-sixth day following the day when the claim to obtain the tax credit was filed for the 12-month period beginning July 1 of a calendar year and including the given month;

— in the case of an excess determined for the given month following a change in situation that results in increasing the amount that had been determined on account of the tax credit for the given month, the forty-sixth day following the day when the change in situation was brought to the attention of the Minister of Revenue;

— in the case of an excess determined for the given month following an application to amend the tax return filed for the taxation year that ended December 31 of the second calendar year preceding the year in which the given month is included where it falls among the first six months of a calendar year and, if it falls among the last six months of a calendar year, of that filed for the taxation year that ended December 31 of the preceding calendar year, the forty-sixth day that follows the day when the Minister of Revenue received the written application for amendment;

— in the case of an excess determined for the given month following an amendment of the tax return filed under Part I of the Income Tax Act or of the statement of income filed for the taxation year that ended December 31 of the second calendar year preceding the year in which the given month is included where it falls among the first six months of a calendar year and, if it falls among the last six months of a calendar year, of the tax return or statement of income filed for the taxation year that ended December 31 of the preceding calendar year, the forty-sixth day that follows the day when the amendment was brought to the attention of the Minister of Revenue.

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14 I.e. the financial assistance granted under the Social Assistance Program or the Social Solidarity Program stipulated by the Individual and Family Assistance Act.

However, no interest will be payable if the total interest calculated for a given month included in a 12-month period beginning July 1 of a calendar year that includes the given month is less than $1.

■ Interest owed

Where the Minister of Revenue determines that an individual received for a given month an amount greater than what he was entitled to, the excess shall be deemed to represent a tax payable by the individual as of the date of its receipt and the latter will have to pay interest on the excess, calculated at the rate applicable to a debt owed to the State,[15] for the period running from the day when such excess became payable until the date of payment.

To that end, where a person pays to the Minister of Revenue or to a financial institution all or part of the amount he must pay following a notice of determination, the date of such payment shall be deemed the date the notice of determination is sent, if the payment is made within the time determined by the Minister and mentioned on such notice.

❑ Solidary liability

Where, for a given month, the Minister of Revenue has paid an individual an amount on account of the solidarity tax credit or has applied to another of his obligations an amount greater than what should have been paid or applied, such individual and the person who, at the beginning of the given month, was his cohabiting spouse with whom he ordinarily lived will be solidarily liable for the payment of such excess to the Minister.

❑ Clarification concerning the determination of work premium reduction thresholds

According to the rules relating to the annual adjustment of reduction thresholds of the work premium (general or adapted),[16] the reduction threshold applicable for a given year to a household, depending on whether it consists of a single adult (single person or single-parent family) or consists of two adults (couple with or without children), corresponds to the higher of the reduction threshold that applied to such household for the year preceding the given year and the amount established to represent the theoretical exit threshold from last-resort financial assistance applicable to such household for the year.[17]

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15 I.e. the rate determined for the purposes of the first paragraph of section 28 of the *Act respecting the ministère du Revenu*, R.S.Q., c. M-31.

16 The work premium, which is paid as a refundable tax credit, has a twofold objective, i.e. support and value work effort, and encourage people to give up last-resort financial assistance to enter the labour market.

17 I.e. the Social Assistance Program in the case of the general work premium and the Social Solidarity Program in the case of the adapted work premium.

Before 2010, persons who received last-resort financial assistance[18] could, in general, receive each month an amount in lieu of advance payment of the refundable tax credit for the QST. This amount, consisting of a monthly allowance, was included in the calculation of the theoretical exit threshold from last-resort financial assistance because it was added to the basic financial assistance benefit.

Since the monthly allowance in lieu of the advance payment of the tax credit for the QST was transformed, for all months of 2010 and the first six months of 2011, into a payment by the Minister of Employment and Social Solidarity of temporary tax assistance intended for recipients of last-resort financial assistance,[19] the rules relating to the annual adjustment of the reduction thresholds of the work premium (general or adapted) will be changed to stipulate that the amount granted in lieu of the advance payment of the tax credit for the QST will be replaced, for the purposes of the calculation of the theoretical exit threshold from last-resort financial assistance, by an amount equal to:

— $300.96 for 2010 and $150.48 for 2011, in the case of a household with one adult;

— $357.96 for 2010 and $178.98 for 2011, in the case of a household consisting of two adults.

For greater clarity, in the event where the theoretical exit threshold from last-resort financial assistance for households fit for work with only one adult is, for 2011 and 2012, less than the theoretical threshold established for 2010,[20] the rules relating to the annual adjustment of the reduction thresholds of the work premium will ensure that the reduction threshold applicable to this type of household for these years may not be less than the one determined for 2010.

1.3 Liability for tax in relation to the acquisition of replacement shares of a labour fund

As a general rule, an individual is entitled to a non-refundable tax credit in respect of shares he acquires as first purchaser and that are issued by a labour fund, namely the Fonds de solidarité FTQ or Fondaction, the Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi.

This tax credit is equal to 15% of the issue price paid for shares acquired from the Fonds de solidarité FTQ. For shares issued by Fondaction, the rate of the tax credit is temporarily raised from 15% to 25% for a share acquired after May 31, 2009 and no later than the date on which the fiscal period at the end of which Fondaction first reaches a capitalization of at least $1.25 billion ends.

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18 See note 14.

19 See note 10, p. A.22 and A.23. This transitional tax assistance, consisting of a refundable tax credit, is granted to the same categories of recipients as those who were entitled to the monthly allowance in lieu of the advance payment of the tax credit for the QST, on the basis of the months receiving last-resort financial assistance.

20 This eventuality is conceivable given that the basic benefit paid by the Minister of Employment and Social Solidarity will cease to be increased as of July 2011.

In every case, the total amount of the issue price of the acquired shares of labour funds a taxpayer may include for the purposes of calculating the tax credit for a year may not exceed $5 000. However, any unused portion of the issue price of shares acquired in a year can be carried over to subsequent years.

The tax credit in respect of the acquisition of shares of a labour fund was introduced to encourage workers to save for retirement while participating in the development of Québec's economy.

In view of its objectives, this tax credit cannot be granted to an individual who has reached age 65. In addition, as a general rule, it cannot be granted to an individual who has reached age 45 before the end of a given taxation year and opted for early retirement or retirement.

However, since such an individual can continue to hold a job or carry on a business, this rule allows for the possibility of considering that an individual, other than an individual who has reached age 65 or who has obtained as a matter of right the redemption of all or part of the shares he held in a labour fund, did not opt for early retirement or retirement at the end of a given taxation year if the aggregate of his eligible salary for the year[21] and of his business income for the year exceeds $3 500.

Since the acquisition of shares of a labour fund must be considered an investment for retirement, shareholders can obtain the redemption of their shares only in the circumstances stipulated in the incorporating statute of the fund or in the cases stipulated by the policy of purchase by agreement, adopted by the board of directors of fund and approved by the Minister of Finance.

In this regard, the policies of purchase by agreement of labour funds enable an annuitant of a registered retirement savings plan (RRSP), in which shares of a labour fund have been transferred, to request that the shares held by the RRSP be redeemed, in whole or in part, so that he can participate in the Home Buyers' Plan (HBP) or in the Lifelong Learning Incentive Plan (LLIP).

Briefly, the HBP allows a first-time homebuyer to withdraw, free of tax, a maximum of $25 000 ($20 000 before 2009) from all of his RRSPs to purchase or construct an eligible dwelling. A participant is required to repay the amounts withdrawn from his RRSPs in equal instalments over a period of 15 years. Amounts not repaid in a year are included in the calculation of the participant's income.

The LLIP enables an individual to withdraw up to $20 000 from his RRSPs tax-free over four years to fund full-time training or studies. The amounts withdrawn must be repaid in equal instalments over a period of 10 years and any amount not repaid in a year is included in the calculation of the participant's income.

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21 The eligible salary of an individual for a year must be determined pursuant to the Act respecting the Québec Pension Plan taking into account, if applicable, the income he received during a period of disability in the year.

Where a participant obtained the redemption of shares issued by a labour fund to participate in the HBP or the LLIP (original shares), he must make his repayment by acquiring each year replacement shares for an amount generally equal to 1/15 (HBP) or 1/10 (LLIP) of the amount received from the redemption of his original shares.

However, the acquisition of replacement shares does not give rise to the tax credit in respect of the acquisition of shares of a labour fund.

Moreover, where, for a year, an individual omits to comply with the obligation to acquire replacement shares, a special tax must be paid on the difference between the amount he was required to invest for such year in replacement shares and the amount he actually invested, considered on a cumulative basis.

The rate of the special tax is 15% for shares of the Fonds de solidarité FTQ. For Fondaction shares, the rate is 15% or 25%, depending on whether the original shares were acquired before June 1, 2009 or after May 31, 2009.

Currently, it is stipulated that the special tax does not apply for a given year where, no later than 60 days after the end of the year, the individual is in a situation where he can obtain redemption of his shares, whether as a matter of right or through the application of a policy of purchase by agreement, unless such redemption is made to enable him to participate in the HBP or the LLIP, as the case may be.

This exception, combined with the flexibility allowing some individuals who opted for early retirement or retirement to benefit from the tax credit in respect of the acquisition of shares of a labour fund violates the principles underlying the measures intended for shareholders of labour funds.

Accordingly, to maintain the integrity of the rules relating to the acquisition of replacement shares, the tax legislation will be amended to stipulate that, as of the taxation year 2010, an individual who has not fulfilled his obligation to acquire replacement shares for a given year may not be exempt from the special tax determined for such year for the reason that he might request, no later than 60 days after that year, the redemption of original shares issued to him, if he can deduct in calculating his tax otherwise payable for the year, an amount on account of the tax credit in respect of the acquisition of shares of a labour fund in respect of an amount paid by him during the period of 10 or 15 years, as the case may be, during which he must acquire replacement shares or in the 60 days following the end of such period.

1.4 Tax adjustment relating to the retrospective determination of certain indemnity benefits

To reduce the iniquity associated with receiving certain income replacement benefits paid under a public compensation plan,[22] the recipients of such benefits must, since 2004, make an adjustment to their tax payable to reflect the fact that part of the basic tax credit is taken into consideration both in the method of determination of these benefits and in the calculation of tax payable regarding their other income.

In general, the benefits giving rise to such an adjustment are those that, according to the terms of the public compensation plan under which they are paid, consist of an income replacement indemnity or compensation for the loss of financial support and are established on the basis of a net income, hereunder called "covered benefit".

Tax adjustment

Currently, an individual who receives covered benefits for a given year must reduce the amount allowed him for the year, for the purposes of calculating the basic tax credit, by an amount equal to all the amounts each of which represents the adjustment calculated regarding such benefits, provided they were determined in such year.

The adjustment relating to the covered benefits is calculated using various formulas stipulated by the tax legislation. These formulas vary depending on whether the covered benefits are determined by the Commission de la santé et de la sécurité du travail (CSST), the Société de l'assurance automobile du Québec (SAAQ) or an entity outside Québec responsible for administering a public compensation plan.[23]

In cases where the covered benefits are determined by the CSST or the SAAQ, these organizations apply the appropriate formulas to calculate, on behalf of the recipient of the benefits, the adjustment relating to them.

However, where covered benefits are determined by an entity other than the CSST or the SAAQ, the recipient of the benefits must calculate the relevant adjustment.

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22 A public compensation plan essentially means a plan established under a statute of Québec or of another jurisdiction stipulating the payment of benefits further to an accident, employment injury, bodily injury or death, other than the Act respecting the Québec Pension Plan or any other statute establishing a plan equivalent to the one established under that Act. The plan stipulated by the Act respecting industrial accidents and occupational diseases, the plan stipulated by the Automobile Insurance Act and the plan stipulated by the Crime Victims Compensation Act are all examples of public compensation plans.

23 For example, the Ontario Worker Safety and Insurance Board or the Workplace Health, Safety and Compensation Commission of New Brunswick.

Retrospective determination of covered benefits

Where covered benefits attributable to a given year are determined – for the first time or once again[24] – in a later year and such determination, had it been made in the given year, would have given rise to a tax adjustment other than the one made, such determination results in tax consequences for the year in which it is made, if the recipient of the covered benefits resides in Québec at the end of such year.

More specifically, such tax consequences, consisting of an addition in the calculation of tax otherwise payable or of a refundable tax credit, as the case may be, can occur where, in a given taxation year, covered benefits attributable to a taxation year prior to the given year but later than taxation year 2003, hereunder called "prior year", are determined and such determination, had it been made in the prior year, would have had the effect of changing the amount taken into consideration in calculating the tax otherwise payable by the recipient of the covered benefits for such year on account of all the amounts each of which represents the adjustment calculated regarding the covered benefits attributable to such year.

To establish the tax consequences relating to the determination in a given year of the covered benefits attributable to a prior year, hereunder called "retrospective determination of covered benefits", the following rectification formula must be used:[25]

Difference[1] between the tax the recipient would have had to pay for the prior year had the determination of the covered benefits been made in such year and the tax payable by the recipient for the prior year	+	Difference[1] between the amount that the eligible spouse of the recipient for the prior year deducted, in calculating his income tax otherwise payable for such year on account of the transfer of unused tax credits between spouses and the amount that such spouse could have deducted on that account for such prior year had the determination of the covered benefits been made in such year – without exceeding his tax otherwise payable for the prior year calculated excluding the deduction on account of the transfer of unused tax credits between spouses[2]	+	Total of each of the amounts that the recipient received on account of the refundable tax credit for a previous year further to the application of this formula regarding covered benefits attributable to the prior year	–	Total of each of the amounts that the recipient was required to include in calculating his tax otherwise payable for a previous year further to the application of this formula regarding covered benefits attributable to the prior year

(1) The difference may be positive or negative.
(2) For greater clarity, the amount of the tax otherwise payable, for the prior year, by the spouse of the recipient must be calculated taking into account the deduction on account of the carry-over of the alternative minimum tax allowed him for the year.

24 Such new determination may have the result of increasing, reducing or eliminating the amount of the adjustment in respect of covered benefits attributable to a given year.

25 Revenu Québec applies the rectification formula on behalf of recipients of covered benefits.

For the purposes of this formula, the tax a recipient would have had to pay for a prior year had the determination of the covered benefits been made in such year, hereunder called "hypothetical tax", is established not only taking into account the adjustments calculated for such year regarding such benefits, but also taking into consideration various deductions that could have been included in the calculation of the recipient's taxable income or tax payable for such year.

Where the amount obtained, for a given year, further to the application of the rectification formula is positive, the recipient of the covered benefits is required to include this amount in calculating his tax otherwise payable for the year.

However, if the amount obtained for the given year is negative, the recipient of the covered benefits may receive, for the year, a refundable tax credit equal to this amount.

Change to the rules governing the retrospective determination of covered benefits

Various changes will be made to the rules governing the retrospective determination of covered benefits to, on the one hand, better maintain the integrity of the tax system and, on the other, reflect the fact that an individual's right to receive covered benefits may, in exceptional circumstances, be recognized only many years after an accident, employment injury, bodily injury or death.

❑ Implementation of integrity rules

To protect the fundamental principles of the tax system as a whole, changes will be made to the rectification formula and integrity rules relating to the application of this formula will be implemented.

These changes and these new rules will apply regarding a retrospective determination of covered benefits made after December 31, 2009.

■ Change to the rectification formula

The current rectification formula has four components. The first component deals with the tax payable (hypothetical or real) for the year to which the retrospective determination of covered benefits relates, the second concerns the effect of such determination on the transfer of unused tax credits between spouses, while the last two components reflect the fact that the rectification formula can apply more than once regarding the same year.

The rectification formula will be changed by adding two elements dealing with the effect a retrospective determination of covered benefits may have on, on the one hand, the transfer of tuition and examination fees and, on the other, the transfer of the recognized parental contribution. These two new elements must be added to the first two components of the rectification formula.

More specifically, the element relating to the transfer of tuition and examination fees will correspond to excess of the amount a person deducted in calculating his tax otherwise payable, for the prior year to which the retrospective determination of covered benefits relates, on account of the transfer, by the recipient of such benefits, of the unused portion of the tax credit for tuition and examination fees over the amount such person could have deducted on that account for such prior year had the determination of such benefits been made in that year.

The element relating to the transfer of the recognized parental contribution will correspond to excess of the amount a person deducted in calculating his tax otherwise payable for the prior year on account of the transfer, by the recipient of the covered benefits, of the recognized parental contribution over the amount such person could have deducted on that account for such prior year had the amount of recognized essential needs for the prior year used for the purposes of the calculation of the transferable amount on account of the recognized parental contribution been reduced by an amount equal to all the amounts each of which represents the adjustment determined, for the prior year, regarding the covered benefits attributable to such year.

- **Integrity rules dealing with the calculation of the hypothetical tax**

To reflect the deductions taken into consideration for the purposes of calculating the hypothetical tax or the tax payable for a year to which a retrospective determination of covered benefits relates, various integrity rules will be implemented. More specifically, the tax legislation will be amended to stipulate that:

— any amount not otherwise deducted in calculating taxable income or tax payable for a taxation year to which the retrospective determination of covered benefits relates, but that is deducted to establish the hypothetical tax payable for such taxation year pursuant to the application of the rectification formula, will be deemed to have been deducted in calculating taxable income or tax payable, as the case may be, for such year;

— any amount deducted in calculating taxable income or tax payable for a taxation year subsequent to the one to which the retrospective determination of covered benefits relates may not be taken into consideration to establish the hypothetical tax payable for such taxation year pursuant to the application of the rectification formula;

— any amount not otherwise deducted in calculating taxable income or tax payable for a taxation year, but that is deducted to establish the hypothetical tax payable for a taxation year to which the retrospective determination of covered benefits relates, may not be taken into account to establish the hypothetical tax payable for the application, in another taxation year, of the rectification formula.

In addition, the tax legislation will be amended to stipulate that, where the retrospective determination of covered benefits attributable to a given taxation year results in reducing the amount that was included in the calculation of tax otherwise payable for such taxation year on account of all the amounts each of which represents the adjustment calculated in respect of such benefits, only the amounts that will be deducted to establish the hypothetical tax payable for such year pursuant to the application of the rectification formula will be deemed, except for a later application of the rectification formula to such year, to have been deducted in the calculation of taxable income or tax payable, as the case may be, for the taxation year.

■ Correlation between the rectification formula and tax averaging mechanisms

The tax system stipulates that an individual who, in a given year, pays deductible support payment arrears or reimburses such support must, as a general rule, use an averaging mechanism to calculate his tax payable for the year, hereunder called "retroactive payments averaging mechanism". This mechanism may also be used by an individual to calculate his tax payable for a given year in which he receives certain retroactive payments all or part of which relate to a prior year.

An individual who, during a given year, reimburses benefits received under the Québec Pension Plan, the Québec Parental Insurance Plan, the Canada Pension Plan or the Employment Insurance program that were included in the calculation of his income for a prior year may use another averaging mechanism, hereunder called "recognized benefit reimbursement averaging mechanism", to calculate his tax payable for the year of the reimbursement.

The purpose of these two averaging mechanisms is to prevent an individual from having tax payable that is different from what he would have had to pay if the amounts eligible for these mechanisms had been received, paid or reimbursed, as the case may be, in the year to which they relate.

Where, for a given year, an individual uses the retroactive payments averaging mechanism, he must increase or reduce, as the case may be, his tax payable for the year by an amount equal to all the amounts each of which represents the amount of the tax adjustment relating to the averaging attributable to a given prior year to which an amount received, paid or reimbursed during the year relates.

Briefly, the amount of the tax adjustment relating to the averaging attributable to the given prior year is determined taking into account, among other things, the difference between the hypothetical tax payable and the real tax payable for such prior year and the unused amount of tax credits transferred for such year to another person that could not then have been transferred.

An individual who, for a given year, uses the recognized benefit reimbursement averaging mechanism can claim a refundable tax credit equal to all the amounts each of which represents the excess of the hypothetical tax payable for a prior year to which the amount reimbursed relates, calculated without taking the reimbursement into account, over the hypothetical tax payable for such year.

For the purposes of these averaging mechanisms for a given year, the hypothetical tax payable for a prior year represents the tax that would have been payable for such year if the part of each amount submitted to either of the averaging mechanisms (for the given year or a prior year) that relates to such prior year had been included or deducted, as the case may be, in the calculation of taxable income for such prior year.

To improve consistency between the rectification formula and the two tax averaging mechanisms, the tax legislation will be amended to stipulate that an amount deducted in calculating the hypothetical tax established according to either of these averaging mechanisms may not be deducted in calculating the hypothetical tax established following a retrospective determination of covered benefits.

The tax legislation will also be amended to stipulate that any amount not otherwise deducted in calculating taxable income or tax payable for a given taxation year, but that is deducted to establish the hypothetical tax payable for a taxation year to which the retrospective determination of covered benefits relates, may not be taken into account to establish the hypothetical tax payable for the application, in another taxation year, of the tax averaging mechanisms.

❑ Extension of the carryback period for a non-capital loss

Following an accident, employment injury, bodily injury or death, some taxpayers may receive, while waiting for recognition of their right to covered benefits, various types of income[26] that they will be required to reimburse, in whole or in part, once these benefits have been determined by the administrator of the public compensation plan.

The amounts reimbursed following the determination of covered benefits will give rise to a deduction in the calculation of the beneficiary's income for the year during which the reimbursement is made, provided these amounts were included in the calculation of his income for the year they were received. The combined effect of this deduction and the deduction allowed in the calculation of taxable income on account of covered benefits may, in some cases, result in the realization of a non-capital loss. As a general rule, such a loss can be carried back over the three taxation years preceding the year of its realization and carried forward over the subsequent twenty taxation years.

In exceptional circumstances, it can happen that the right to covered benefits is recognized more than three years after an accident, employment injury, bodily injury or death. It is possible that an individual who has reimbursed amounts received while he was waiting for his right to covered benefits to be recognized may be unable to benefit fully from the carryback of the loss he realized if his income, for the years following that of the realization of such loss, consists almost exclusively of covered benefits, which are not taxable.

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26 For example, a wage, wage insurance benefits or benefits paid under a statute, such as the Act respecting the Québec Pension Plan, the Canada Pension Plan, the Employment Insurance Act or the Individual and Family Assistance Act.

Accordingly, given that the retrospective determination of covered benefits attribuable to a year that is both after 2003 and prior to the third year preceding such determination will generally lead to a tax charge that may never be offset, an exception will be introduced to the rule limiting the carryback period of a non-capital loss to three years.

More specifically, the tax legislation will be amended to stipulate that, where an amount is paid, during a given taxation year, by an individual or on his behalf on account of reimbursement of an amount included in the calculation of the individual's income for a taxation year prior to the given year and after 2003 and that such reimbursement is related to the fact that covered benefits attributable to such prior year have been determined in the given year, the individual may deduct, in calculating his taxable income for the prior year, an amount in respect of a non-capital loss that he realized in the given year, provided such amount can reasonably be attributed to such reimbursement.

These amendments will apply regarding a reimbursement of an amount received while waiting for recognition of the right to covered benefits made after December 31, 2009. However, an individual may make an election in respect of such a reimbursement made after December 31, 2007 and before January 1, 2010 to have these amendments apply to it. The individual must make such election no later than the filing deadline for his tax return for taxation year 2010.

2. MEASURES CONCERNING BUSINESSES

2.1 Temporary increase in the rate of capital cost allowance applicable to a pipeline

In general, the rate of capital cost allowance a taxpayer may claim in respect of property acquired after February 22, 2005 that consists of a pipeline used for the transportation, but not the distribution, of oil, natural gas or related hydrocarbons, including control and monitoring systems, valves and any other property that is ancillary equipment to the pipeline, is 8% using the diminishing balance method. Such property is grouped in Class 49 of Schedule B of the Regulation respecting the Taxation Act.[27]

The installation of efficient and safe energy infrastructures is a major issue for Québec. In addition, pipelines are a more environmentally-friendly and more productive way to transport oil and natural gas compared with conventional means of transportation such as trains or ships. Consequently, to further support the oil, natural gas and related hydrocarbons transportation industry, the 8% capital cost allowance rate applicable to this type of properties will be temporarily raised to 30%.

More specifically, Québec's tax regulations will be amended so that a 30% capital cost allowance rate is applicable to properties currently grouped in Class 49, i.e. property consisting of a pipeline for the transportation, but not the distribution, of oil, natural gas or related hydrocarbons, including the control and monitoring systems, values and any other property that is ancillary equipment to the pipeline.[28]

To give rise to the 30% capital cost allowance rate, such properties must be new at the time of its acquisition by the taxpayer and be acquired after the date of publication of this information bulletin but before January 1, 2015.

For greater clarity, the half-year rule will apply to the properties covered by this rate increase. As a result of this rule, the capital cost allowance that may be claimed in the year when the property becomes ready to be put into service is equal to half the amount that would normally be deductible. In addition, the separate class election,[29] which applies to Class 49 properties, will not be possible for properties covered by this rate increase.

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27 R.R.Q., 1981, c. I-3, r. 1.

28 The following properties are not included in Class 49 and is not covered by this announcement: a natural gas pipeline, if it is or has been established to the satisfaction of the Minister of Revenue that the main source of supply of the pipeline will be depleted, or is likely to be, within 15 years of the date the pipeline entered into service, the pumping or compression equipment, including its ancillary equipment, included in Class 7 because of paragraph *j* of such class, a building or other structure.

29 See section 130R202 of the *Regulation respecting the Taxation Act*.

2.2 Qualification of certain expenses to the refundable tax credit for film production services

On June 12, 2009, to stimulate job creation and further encourage foreign producers to choose Québec as a filming location, major changes were made to the refundable tax credit for film production services.[30]

Accordingly, the tax credit, which previously was calculated at 25% of qualified production expenses, is now calculated at 25% of all-spend production costs incurred in Québec attributable to the various stages of the completion of a qualified production,[31] which correspond to the total of the qualified labour cost and the cost of qualified properties.

The qualified labour cost is a broader notion than the notion of eligible labour expenditures that, previously, represented the tax credit base.

According to this broader notion, the qualified labour cost of a qualified corporation, for a taxation year, means, in general, the wages or salaries, including the associated payroll taxes,[32] that were incurred by the corporation, in the year, for an employee, as well as the cost of any service contract,[33] incurred by the corporation with service provider, in relation to an eligible production,[34] provided:

— they relate to services provided in Québec,[35] in the course of the year, in relation to the production stages running from screenplay to postproduction;[36]

— they are directly attributable to the completion of the qualified production; and

— they are reasonable in the circumstances.

30 MINISTÈRE DES FINANCES DU QUÉBEC, *Information Bulletin 2009-3*, June 12, 2009.

31 A qualified low-budget production can only give rise to the tax benefit relating to computer-aided special effects and animation. Concerning the notion of qualified low-budget production, see note 9, p. 1.

32 These are the payroll taxes the employer must pay, such as contributions to the Québec Pension Plan, to the Commission des normes du travail, to the Québec Parental Insurance Plan and to Employment Insurance. However, they exclude contributions to the Health Services Fund (HSF).

33 Including the fees the eligible corporation must pay to organizations like the Union des artistes (UDA) and the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA).

34 And, for the taxation year during which the corporation submits an application for an advance ruling to the Société de développement des enterprises culturelles (SODEC) the eligible labour cost it incurred in a year prior to the one during which it submitted such application.

35 Whether these services are provided directly by the supplier of services or indirectly by another person.

36 Or in relation to another stage of the production that is completed after postproduction within a time considered reasonable by the Minister of Revenue but that cannot exceed the date that occurs 18 months after the fiscal year end of the qualified corporation that includes the date of the recording of the trial print of the qualified production.

However, a wage or salary, including the associated payroll taxes, or a cost of a service contract incurred directly or indirectly regarding a producer, an author, a scriptwriter, a director, a production designer, a director of photography, a music director, a composer, a conductor, an editor, a visual effects supervisor, an actor (speaking role) or an interpreter is qualified only if such person is an individual who resides in Québec at the time when the services are provided in the course of the completion of the qualified production.

The cost of qualified properties of a qualified corporation, for a taxation year, means, in general, the costs incurred by the corporation, in the year, regarding the acquisition or rental, in Québec, of tangible properties (including software), in relation to a qualified production,[37] provided:

— they relate to properties used in Québec, in the course of the year, in relation to the production stages running from screenplay to postproduction;[38]

— they are incurred with:

  — an individual who resides in Québec at the time the properties are acquired or rented, in the course of the completion of the qualified production; or

  — a corporation or partnership that carries on a business in Québec and has an establishment there at the time the properties are acquired or rented, in the course of the completion of the qualified production;

— they are directly attributable to the completion of the qualified production; and

— they are reasonable in the circumstances.

Moreover, the improvement for computer-aided special effects and animation for a qualified production is calculated at a rate of 20% on the qualified labour cost (broad notion), provided such cost relates to qualified activities tied to the completion of computer animation and special effects for use in the qualified production.[39]

The notion of "qualified production expenses" raises questions as to qualification of certain expenses incurred in the course of completion of a qualified production.

To respond to these questions, the tax legislation will be amended to make certain clarifications regarding qualified expenses on account of the qualified labour cost and to broaden the notion of cost of qualified properties.

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37 And, for the taxation year during which the corporation submits an application for an advance ruling to SODEC, the cost of qualified properties it incurred in a year prior to the one during which it submitted such application.

38 See note 36.

39 MINISTÈRE DES FINANCES DU QUÉBEC, *Information Bulletin 2010-3*, February 5, 2010. However, these new rules do not apply to qualified low-budget productions. Accordingly, for the latter, the improvement for computer-aided special effects and animation continues to apply to the eligible labour expenditures that relate to computer-aided special effects and animation and not to the qualified labour cost (broader notion).

These modifications will apply regarding a qualified production for which the main photography or recording work in Québec was or will be completed after June 12, 2009.

■ Clarifications to the qualified expenses on account of qualified labour cost

For greater clarity, the following expenses constitute qualified expenses on account of the qualified labour cost, in relation to a qualified production:

— the cost of police services at filming locations;

— indemnities for living expenses, provided they relate to eligible wages and salaries or to the cost of an eligible service contract on account of the qualified labour cost;[40]

— legal expenses.

As for the other expenses included in the qualified labour cost, for a taxation year, these expenses are qualified on this account only if:

— they relate to services provided in Québec[41] in the course of the year, in relation to the production stages running from screenplay to postproduction;[42]

— they are directly attributable to the completion of the qualified production;

— they are reasonable in the circumstances.

■ Broadening of the notion of cost of qualified properties

The notion of cost of qualified properties of a qualified corporation, for a taxation year, will be broadened to include the following expenses, in relation to a qualified production:

— travel expenses:

  — where both the point of departure and the point of arrival are located in Québec; or

  — where either the point of departure or the point of arrival is located in Québec, and the travel expenses were incurred with a Québec travel agent in the course of completion of the qualified production, i.e. with:

    - an individual who resides in Québec at the time when the travel agent services are provided; or

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40 Accordingly, for instance, indemnities for living expenses regarding a producer who does not reside in Québec at the time the services are provided in the course of completion of the qualified production will not be considered as qualified for the tax credit.

41 See note 35.

42 See note 36.

- a corporation or partnership that carries on a business in Québec and has an establishment there at the time when the travel agent services are provided;

— meal expenses, including beverages, as well as the cost of catering services at the filming locations;

— lodging expenses.

However, these expenses will only qualify on account of cost of qualified properties, for a taxation year, in relation to a qualified production,[43] provided:

— they are incurred in Québec,[44] in the course of the year, in relation to the production stages running from screenplay to postproduction[45] with:

  — an individual who resides in Québec at that time, in the course of the completion of the qualified production; or

  — a corporation or partnership that carries on a business in Québec and has an establishment there at that time, in the course of the completion of the qualified production;

— they are directly attributable to the completion of the qualified production;

— they are reasonable in the circumstances.

The notion of cost of qualified properties of a qualified corporation, for a taxation year, will be also broadened to include the cost incurred by the corporation, in the year, in Québec regarding an insurance contract or a contract relating to a completion bond, in relation to a qualified production,[46] provided:

— they relate to a contract entered into in relation to the production stages running from the screenplay to postproduction;[47]

— they are incurred in the course of completion of the qualified production;

— the issuer of the insurance contract or of the contract relating to a completion bond carries on a business in Québec and has an establishment there at the time the contract is entered into;

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43 See note 37.

44 To that end, the travel expenses mentioned above will be deemed to be expenses incurred in Québec.

45 See note 36.

46 And, for the taxation year during which the corporation submits an application for an advance ruling to SODEC, the costs regarding an insurance contract or a contract relating to a completion bond it incurred in a year prior to the one during which it submitted such application.

47 See note 36.

— they are directly attributable to the completion of the qualified production; and

— they are reasonable in the circumstances.

Lastly, the notion of cost of qualified properties of a qualified corporation, for a taxation year, will be also broadened to include the expenses relating to issuing of a certificate incurred by the corporation with the Société de développement des entreprises culturelles (SODEC), in the year, in relation to a qualified production. [48]

■ **Non-qualified expenses**

For greater clarity, the following expenses do not constitute qualified production costs for the purposes of the refundable tax credit for film production services:

— entertainment expenses;

— copyright acquisition;

— financial expenses.

2.3 New excluded amount of assistance for the purposes of the refundable tax credit for Québec film and television production

In general, the amount of any governmental assistance and any non-governmental assistance, except an excluded amount of assistance, that a corporation received or is entitled to receive, must reduce the amount of eligible expenditures included in the calculation of the refundable tax credit for Québec film and television production.

Generally, the amount of financial assistance granted by the Canadian Television Fund is an excluded amount of assistance for the purposes of the tax credit. However, this fund ceased operations March 31, 2010 and was replaced by the Canada Media Fund.[49]

Accordingly, the tax legislation will be amended so that the amount of financial assistance granted by the Canada Media Fund constitutes an excluded amount of assistance for the purposes of the refundable tax credit for Québec film and television production.

However, given that the Canadian Television Fund ended its activities only recently, the existing rule stipulating, in general, the exclusion of the amount of financial assistance granted by this fund on account of government or non-government assistance will be maintained.

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48 And, for the taxation year during which the corporation submits an application for an advance ruling to SODEC, the expenses relating to issuing of a certificate incurred by the corporation with SODEC in a year prior to the one during which it submitted such application.

49 More specifically, the Canada Media Fund replaces two funds, namely the Canadian Television Fund and the Canada New Media Fund.

Lastly, financial assistance granted by the Canada Media Fund will constitute financial assistance granted by a public organization for the purposes of the improvement relating to certain Québec film or television productions that do not receive any financial assistance granted by a public organization.[50] Consequently, a production that receives such financial assistance will not be eligible for this improvement.

These amendments will apply as of April 1, 2010.

2.4 Changes regarding the refundable tax credit for the construction and major repair of public access roads and bridges in forest areas

A temporary refundable tax credit was introduced in the March 23, 2006 Budget Speech to foster the construction and major repair of public access roads and bridges in forest areas.[51]

In the March 30, 2010 Budget Speech,[52] this tax credit, which was to end December 31, 2010, was extended for 27 months. It was announced at that time that this tax credit was being extended until March 31, 2013.

This tax credit enables an eligible corporation that incurs eligible expenses for the construction or major repair of eligible bridges or access roads to receive an amount corresponding to 90% of eligible expenses incurred before January 1, 2011, 80% of eligible expenses incurred in calendar year 2011, 70% of eligible expenses incurred in calendar year 2012 and 60% of eligible expenses incurred from January 1 to March 31, 2013.

To be eligible for this tax credit, a corporation, or a partnership of which it is a member, must in particular be party to a timber supply and forest management agreement (TSFMA), a forest management agreement (FMA) or a forest management contract (FMC) entered into with the Ministère des Ressources naturelles et de la Faune (MRNF).

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50 In the January 14, 2009 economic statement, an increase of 10% of the labour expenditures giving rise to the tax credit for Québec film and television production was introduced regarding some productions otherwise eligible for this tax credit, provided they do not receive any financial assistance from a public organization. To that end, financial assistance granted by a public organization means, in general, financial assistance that consists of an excluded amount of assistance for the purposes of the rules relating to government or non-government assistance for the purposes of the tax credit.

51 MINISTÈRE DES FINANCES DU QUÉBEC, *2006-2007 Budget – Additional Information on the Budgetary Measures*, March 23, 2006, Section 1, measure 2.2.2, p. 43.

52 MINISTÈRE DES FINANCES DU QUÉBEC, *2010-2011 Budget – Additional Information on the Budgetary Measures*, March 30, 2010, measure 2.12, p. A.101.

For the expenses relating to an access road to give rise to the tax credit, the access road must, among other conditions, appear in an annual forest management plan (AFMP) submitted to the MRNF as part of a TSFMA, an FMA or an FMC to which the eligible corporation or the partnership of which it is a member is a party and be covered by an eligibility certificate issued by the MRNF. The expenses relating to a bridge only give rise to the tax credit if the bridge is part of such an access road. In addition, the MNRF must issue an eligibility certificate for the bridge.

When the tax credit was introduced in 2006, it was stipulated that the expenses giving rise to it had to be incurred by a corporation or a partnership, as the case may be, after March 23, 2006 and before January 1, 2011. These expenses had to be incurred in accordance with what appears in an AFMP filed with the MRNF before January 1, 2010, and the construction or major repair of an eligible access road or bridge by the corporation or partnership, as the case may be, or on behalf of either of them, had to begin before January 1, 2010.

When the tax credit was extended, these application details were transposed for the 27-month extension period with the necessary adaptations. Accordingly, it was announced that the expenses giving rise to the tax credit for the extension period had to be incurred by a corporation or a partnership, as the case may be, after December 31, 2010 and before April 1, 2013. In addition, these expenses had to be incurred in accordance with what appears in an AFMP filed with the MRNF before January 1, 2012, and the construction or major repair of an eligible access road or bridge by the corporation or partnership, as the case may be, or on behalf of either of them, had to begin before January 1, 2012.

The Forest Act[53] stipulates that the recipient of a TSFMA or an FMA must, before January 1 of each year, draw up and AFMP and submit it for MRNF approval for each management unit covered by its contract, failing which notice must be given to the MRNF indicating the date by which the recipient considers it can submit the AFMP. The MRNF may approve the AFMP, reject it or approve it with changes it makes. The AFMP comes into force on the 1st of April following its submission to the MRNF, or the date it is approved by the MRNF if later. It remains valid until the following March 31. The recipient may, at any time, submit changes to the AFMP to the MRNF for approval. Accordingly, an AFMP can be submitted to the MRNF for approval after January 1st of the year concerned and may be changed at any time,[54] This flexibility stipulated in the Forest Act enables the recipient to carry out forest management activities (including the construction or repair of eligible access roads or bridges) that had neither been started nor planned on January 1 of the year concerned.

53 R.S.Q., c. F-4.1, sec. 59, 59.2, 59.3, 59.5 and 84.8. In the case of a recipient of an FMC, the Forest Act does not stipulate the date when the AFMP must be submitted or its period of validity (see sections 102.3 to 104.1 of the Act).

54 In case of natural disasters, section 79 of the Forest Act provides that MRNF may prepare or administer a special forest management plan, for such period and on such conditions it determines, to ensure salvage of timber. This plan applies in the place and stead of the other plans approved, by the MRNF.

In such a context, to give full effect to the extension of the tax credit and thus ensure that it applies continuously until the end of the extension period, the requirements relating to the presentation date of the AFMP and the starting date of construction or major repair of the eligible access road or bridge will be eliminated. A clarification will also be made concerning the period of validity of the eligibility certificates issued by the MRNF. Lastly, since the rate of the tax credit declines from one year to the next and that the tax credit only applies to expenses incurred until March 31, 2013, the notion of "expenses incurred" needs to be clarified.

❑ Elimination of the requirement relating to the presentation date of the AFMP

Since the tax credit was introduced in 2006, the tax legislation has stipulated that the expenses incurred after March 23, 2006 and before January 1, 2011 can give rise to the tax credit only if they are incurred in accordance with what appears in an AFMP presented to the MRNF before January 1, 2010. The requirement relating to the presentation date of the AFMP will be eliminated. More specifically, the tax legislation will be amended, effective as of January 1, 2010, to stipulate that the expenses incurred after March 23, 2006 and before January 1, 2011 can give rise to the tax credit if they are incurred in accordance with what appears in an AFMP[55] approved by the MRNF.

On March 30, 2010, when the tax credit was extended, it was announced that expenses incurred after December 31, 2010 and before April 1, 2013 could give rise to the tax credit only if they were incurred in accordance with what appears in an AFMP presented to the MRNF before January 1, 2012. The requirement relating to the presentation date of the AFMP will also be eliminated, so that expenses incurred after December 31, 2010 and before April 1, 2013 may give rise to the tax credit if they are incurred in accordance with what appears in an AFMP[56] approved by the MRNF.

❑ Elimination of the requirement relating to the starting date of construction or major repair of an eligible access road or bridge

Under the existing tax legislation, expenses incurred in 2010 can give rise to the tax credit only if the construction or major repair of an eligible access road or bridge by the corporation or partnership, as the case may be, or on behalf of either of them, had started before January 1, 2010. The tax legislation will be amended, effective as of January 1, 2010, to eliminate this requirement relating to the starting date of construction or major repair of an eligible access road or bridge.

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55 Or in a special forest management plan under section 79 of the Forest Act.

56 See prec. note.

In the same vein, when the tax credit was extended, it was announced that expenses incurred after December 31, 2010 and before April 1, 2013 could give rise to the tax credit only if the construction or major repair of an eligible access road or bridge by the corporation or partnership, as the case may be, or on behalf of either of them, had started before January 1, 2012. This requirement relating to the starting date of construction or major repair of an eligible access road or bridge will also be eliminated.

❑ Clarification relating to the eligibility certificates issued by the MRNF

At the time of the announcement of the extension of the tax credit, the eligibility certificates issued by the MRNF regarding an access road or bridge eligible for the tax credit were generally valid until December 31, 2010.

To ensure better monitoring in the eligibility of the parameters of the tax credit that are within the jurisdiction of the MRNF, it should be pointed out that the period of validity of the eligibility certificates issued by the MRNF is not changed by the fact that the tax credit has been extended. Accordingly, the eligibility certificates whose period of validity ends December 31, 2010 will actually cease to be valid on that date[57] and a new eligibility certificate will have to be obtained for the access road or bridge, as the case may be.

❑ Clarification relating to the notion of expenses incurred

In the context where the rate of the tax credit declines from one year to the next and the tax credit only applies to expenses incurred until March 31, 2013, the notion of "expenses incurred" needs to be clarified to prevent pre-paid expenses giving rise to a higher tax credit rate or to a tax credit regarding work done after March 31, 2013.

Accordingly, where expenses incurred in a calendar year are reasonably attributable to work carried out in a later calendar year, such expenses will be deemed incurred in such later calendar year. Similarly, where expenses incurred or deemed incurred in 2013 are reasonably attributable to work carried out after March 31, 2013, such expenses will be deemed incurred after March 31, 2013 and, in view of the end of the extension period of the tax credit, such expenses will not give rise to the tax credit.

57 Subject to the amendment or revocation authority of the MRNF.

2.5 Adjustments to the tax regime applicable to designated trusts and their beneficiaries

In *Information Bulletin 2002-8*, of July 11, 2002, various measures were announced relating to the tax regime applicable to designated trusts and their beneficiaries. In particular, these measures included the obligation to file an information return for the beneficiaries[58] of designated trusts, the non-recognition of the elections stipulated in subsections 13.1 and 13.2 of section 104 of the Income Tax Act[59] in relation to an amount attributed to a designated beneficiary of a designated trust and the granting of a non-refundable tax credit to such designated beneficiary to prevent the same amounts being taxed in more than one province of Canada.

A "designated trust" means a trust that is resident in Canada but outside Québec on the last day of a taxation year, but does not include a unit trust or a trust regarding which the tax legislation specifically stipulates that the elections stipulated in subsections 13.1 and 13.2 of section 104 of the Income Tax Act may not be made.

A "designated beneficiary" of a designated trust for a taxation year of the latter means a beneficiary of the designated trust or, where the beneficiary of the designated trust is a partnership, a member of the partnership, having for the year, along with any person or partnership with which it is not dealing at arm's length, either a share of the aggregate of income interests of the designated trust representing an amount of $5 000 or more, or a share of the aggregate of income interests in the designated trust or of the aggregate of capital interests in the designated trust corresponding to at least 10% of the aggregate of income interests or the aggregate of capital interests in the designated trust.

A beneficiary of a designated trust for a given taxation year of such trust must enclose with his tax return, which he must file for his taxation year in which the given year ends, an information return[60] using the prescribed form containing the prescribed information. This obligation applies similarly to the members of a partnership that is the beneficiary of a designated trust. The nature of the information requested depends on whether the beneficiary of the designated trust, or the member of the partnership that is a beneficiary of the designated trust, qualifies as a designated beneficiary or not.

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58 Where the beneficiary of the designated trust is a partnership, this obligation covers the members of the partnership that is the beneficiary of the designated trust.

59 R.S.C. 1985, (5th Supp.), c. 1. Briefly, the elections stipulated in subsections 13.1 and 13.2 of section 104 of the Income Tax Act allow, under certain conditions, the amount of income or of net taxable capital gains that a trust attributes to a beneficiary for a given year to be deemed not to have been paid by the trust to the beneficiary nor to have become payable to the beneficiary. Accordingly, the trust assumes the tax on this amount.

60 This information return is stipulated in sections 671.8 and 671.9 of the Taxation Act, R.S.Q., c. I-3.

In addition, briefly, where a designated trust allocates an amount, in accordance with subsections 13.1 or 13.2 of section 104 of the Income Tax Act, to a designated beneficiary or to a partnership at least one of whose members is a designated beneficiary, the election of the trustees that the trust be taxed on the amount thus allocated is not recognized for the purposes of the Taxation Act. However, to avoid double taxation at the provincial level, a non-refundable tax credit is granted to the designated beneficiary, corresponding, in general, to the tax paid on that amount by the designated trust to the government of another Canadian province.

For the purposes of these measures, the Taxation Act does not stipulate a specific criterion of attachment to Québec as far as the targeted beneficiaries are concerned. However, the intention of the ministère des Finances at the time of the announcement of these changes to the tax regime applicable to designated trust and to their beneficiaries was to prevent an undue reduction of Québec income tax through the use, by a Québec taxpayer, of a non-Québec Canadian trust.

Consequently, amendments will be made to Québec's tax legislation so that the obligation for a beneficiary to file an information return, the non-recognition of the elections stipulated in subsections 13.1 and 13.2 of section 104 of the Income Tax Act and the granting of a non-refundable tax credit to the designated beneficiary of a designated trust target, in the case of an individual, only a beneficiary[61] or a designated beneficiary, as the case may be, who resides in Québec the last day of the taxation year in which the taxation year of the designated trust ends and, in the case of a corporation, only a beneficiary[62] or designated beneficiary, as the case may be, that has an establishment in Québec at any time of the taxation year in which the taxation year of the designated trust ends.

Changes will also be made to the calculation of the tax credit for the designated beneficiary of a designated trust where the designated beneficiary is a corporation, so that this tax credit is granted to the corporation only regarding the portion of the amount allocated by the designated trust that is effectively subject to double taxation at the provincial level.

❑ Adjustment to the obligation to file an information return

The tax legislation will be amended so that a beneficiary of a designated trust for a given taxation year of such trust will be required to enclose with his tax return, which he must file for his taxation year in which the given year ends, or that he would have to file if he had tax payable for his taxation year in which the given year ends, an information return on a prescribed form containing the prescribed information only if, in the case of an individual, such individual resides in Québec the last day of his taxation year or, in the case of a corporation, such corporation has an establishment in Québec at any time of taxation year.

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61 See note 58.

62 See note 58.

Similarly, where the beneficiary of the designated trust is a partnership, a member of the partnership will have to enclose with his tax return, which he must file for his taxation year in which ends the fiscal period of the partnership during which the given year ends, or that he would have to file if he had tax payable for his taxation year in which such fiscal period ends, an information return on a prescribed form containing the prescribed information only if, in the case of an individual, such individual resides in Québec the last day of his taxation year or, in the case of a corporation, such corporation has an establishment in Québec at any time of taxation year.

For the purposes of these rules, in the case where an individual dies or ceases to reside in Canada during a taxation year, the last day of his taxation year will be the day of his death or the last day in which he resided in Canada, as the case may be.

❑ Adjustment to the definition of the expression "designated beneficiary"

The tax legislation will be amended to provide that a designated beneficiary of a designated trust for a taxation year of such trust means a beneficiary of the designated trust that has for the year, with any person or partnership with which it is not dealing at arm's length, either a share of the aggregate of income interests of the designated trust representing an amount of $5 000 or more, or a share of the aggregate of income interests in the designated trust or of the aggregate of capital interests in the designated trust corresponding to at least 10% of the aggregate of income interests or the aggregate of capital interests in the designated trust and that, if he is an individual, resides in Québec the last day of his taxation year in which the taxation year of the designated trust ends or, if it is a corporation, has an establishment in Québec at any time in its taxation year in which the taxation year of the designated trust ends.

Similarly, where the beneficiary of the designated trust is a partnership, a designated beneficiary of a designated trust for a taxation year of such trust will mean a member of the partnership that has, for the year, with any person or partnership with which it is not dealing at arm's length, either a share of the aggregate of income interests of the designated trust representing an amount of $5 000 or more, or a share of the aggregate of income interests in the designated trust or of the aggregate of capital interests in the designated trust corresponding to at least 10% of the aggregate of income interests or the aggregate of capital interests in the designated trust and that, if he is an individual, resides in Québec the last day of his taxation year in which the fiscal period of the partnership during which the taxation year of the designated trust ends or, if it is a corporation, has an establishment in Québec at any time in its taxation year in which the fiscal period of the partnership during which the taxation year of the designated trust ends.

For the purposes of these rules, in the case where an individual dies or ceases to reside in Canada during a taxation year, the last day of his taxation year will be the day of his death or the last day in which he resided in Canada, as the case may be.

❑ Adjustment to the tax credit for designated beneficiary of a designated trust granted to a corporation

A taxpayer who is a designated beneficiary of a designated trust for a taxation year of such trust is entitled to a non-refundable tax credit for a given taxation year corresponding to the income tax paid by the designated trust for its taxation year to a government of a province, other than Québec, that relates to amount attributed[63] to the taxpayer or to a partnership of which he is a member and that the taxpayer included in calculating his income for the given taxation year.[64] To that end, the income tax paid by the designated trust for its taxation year to a government of a province, other than Québec, on the amount thus attributed and included in the calculation of the taxpayer's income may not exceed the tax that the designated trust would otherwise have had to pay in respect of this amount in Québec, if it had resided in Québec the last day of the year.

The rules concerning the tax credit for designated beneficiary of a designated trust do not pose a problem where the designated beneficiary is an individual. That is not the case where the designated beneficiary is a corporation with one or more establishments in Québec and outside Québec.

A corporation that has an establishment in Québec at any time in a taxation year must pay a tax in Québec on its taxable income for such taxation year. Where such corporation has an establishment outside Québec, its tax payable is equal to the portion of such tax otherwise calculated multiplied by the proportion obtained by dividing its business done in Québec by the aggregate of its business done in Canada or in Québec and elsewhere for the taxation year (proportion of business done in Québec).

Accordingly, a corporation with one or more establishments in Québec and outside Québec pays tax in Québec on a portion of its income from all sources corresponding to its proportion of business done in Québec. Where the rules applicable to the designated beneficiary of a designated trust apply regarding such a corporation, only a portion of the amount attributed by the trust that is included in the corporation's income is covered by double taxation at the provincial level.

To ensure that the non-refundable tax credit for designated beneficiary of a designated trust is granted only regarding such portion of the amount attributed by the designated trust that is effectively covered by double taxation at the provincial level, the tax legislation will be amended so that the proportion of business done in Québec by a corporation is used in the calculation of its non-refundable tax credit for designated beneficiary of a designated trust.

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63 Attribution made in the tax return filed by the designated trust for the year under Part I of the Income Tax Act in accordance with one of subsections 13.1 and 13.2 of section 104 of the Act.

64 Inclusion made pursuant to either section 662 or 663 of the Taxation Act because of the application of section 671.7 of the Act.

Accordingly, the tax legislation will be amended to provide that a corporation that is a designated beneficiary of a designated trust for a taxation year of such trust may receive a non-refundable tax credit for a given taxation year, corresponding to the income tax paid by the designated trust for its taxation year to a government of a province, other than Québec, that relates to amount the designated trust attributed[65] either to the corporation, or to a partnership of which the corporation is a member, and that the corporation included in calculating its income for the given taxation year,[66] multiplied by the proportion of business done in Québec by the corporation for the given taxation year.

For greater clarity, to that end, the income tax paid by the designated trust for its taxation year to a government of a province, other than Québec, on the amount thus attributed and included in the corporation's income may not exceed the tax that the designated trust would otherwise have had to pay in respect of this amount in Québec, if it had resided in Québec the last day of the year.

❑ Application date

These amendments will apply regarding the taxation years of a beneficiary of a designated trust, including a member of a partnership that is a beneficiary of a designated trust, or of a designated beneficiary of a designated trust, that end after the day of publication of this information bulletin.

These amendments will also apply for a beneficiary of a designated trust, including a member of a partnership that is a beneficiary of a designated trust, or of a designated beneficiary of a designated trust, regarding a taxation year ended after July 11, 2002 and no later than the day of publication of this information bulletin, in the case of a corporation, and, in other cases, regarding taxation year 2002 and any subsequent taxation year that ended no later than the day of publication of this information bulletin, where the following conditions are satisfied:

— the beneficiary of the designated trust, the member of the partnership that is a beneficiary of the designated trust or the designated beneficiary, as the case may be, had not enclosed the information return stipulated in sections 671.8 and 671.9 of the Taxation Act, using the prescribed form containing the prescribed information, with its tax return, for such taxation year, by the later of the day corresponding to the filing deadline applicable to it for such year or the day preceding the day of publication of this information bulletin;

— the beneficiary of the designated trust, the member of the partnership that is a beneficiary of the designated trust or the designated beneficiary, as the case may be, has not claimed, in such tax return it filed by the later of these two days, the tax credit for designated beneficiary of a designated trust.

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65 See note 63.

66 See note 64.

2.6 Recognition of an eligible public research centre

A taxpayer who carries on a business in Canada can obtain a refundable tax credit for scientific research and experimental development (R&D) of 35% in relation to R&D activities, where such activities are carried out on his behalf, in Québec, by an eligible public research centre in the course of an eligible research contract that the taxpayer enters into with such a centre.

In this regard, it is the responsibility of the ministère des Finances to recognize a research centre as an eligible public research centre.

More specifically, to be recognized as an eligible public research centre for the purposes of this refundable tax credit for R&D, a research centre must demonstrate its capacity, in terms of human, physical and financial resources, to carry out R&D work on behalf of businesses. Accordingly, the employees must have the qualifications required to carry out R&D work awarded on a sub-contracting basis to the research centre, and the research centre must have premises and equipment that enable it to do the work in its field of expertise.

In addition, the research centre must obtain most of its financing from public funds.

Moreover, all research centres that the ministère des Finances has recognized as eligible public research centres must annually confirm with the ministère des Finances that they satisfy the eligibility criteria listed above. This annual return relates to a calendar year and must be filed no later than the last day of February following such calendar year.

Lastly, an eligible public research centre must advise the ministère des Finances as soon as a change occurs, regarding human, physical or financial resources, that could compromise its capacity to carry out R&D work on behalf of businesses or to satisfy the requirement relating to the source of its funding.

In this context, a new eligible public research centre will be recognized, namely Biopterre – Centre de développement des bioproduits. This recognition will apply regarding R&D carried out after December 31, 2009, under an eligible research contract concluded after that date.

For greater clarity, only eligible R&D work according to the Taxation Act carried out on a subcontracting basis by this centre, in Québec, in the course of an eligible research contract for which a favourable advance ruling has been rendered according to the procedure established under that Act, will enable a taxpayer who carries on a business in Canada to receive this refundable tax credit for R&D.

2.7 News release 2006-065 of the Minister of Finance of Canada

On November 9, 2006, the Minister of Finance of Canada, by means of news release, made public a Notice of Ways and Means Motion to introduce an Act to amend the Income Tax Act, including amendments in relation to foreign investment entities and non-resident trusts, and to provide for the bijural expression of the provisions of that Act.[67] This Notice of Ways and Means Motion includes provisions to amend the Income Tax Act in relation to securities lending arrangements (SLAs).

Briefly, an SLA is an arrangement under which a person (the lender) transfers or lends, at any particular time, a qualified security to another person (the borrower) with whom he deals at arm's length, where it is reasonable to expect, at the particular time, that the borrower will transfer or return to the lender, after such time, a security identical to the one transferred or loaned, where the borrower has the obligation to pay to the lender amounts equal to the dividends paid on the security during the lending period of the security, where the qualified security is a share of capital stock, and where there is no tangible change in the possibilities of gains, losses or profits on the security for the lender. Where the SLA is entered into, subject to certain conditions, the loan of the qualified security is not treated as a disposition of such security by the lender for the purposes of the Income Tax Act.

Essentially, at the federal level, it is proposed to change the definition of "qualified security" for the purposes of the SLA rules to include "qualified trust units".[68] It is also proposed to allow SLAs to be entered into, under certain conditions, by a lender and a borrower that do not deal with each other at arm's length, and that a partnership be likened to a person for the purposes of the provisions relating to SLAs.

Since Québec's tax system is harmonized with the federal tax system as far as SLAs are concerned, Québec's tax legislation will be amended to incorporate, with adaptations based on its general principles, most of the proposed amendments to the federal tax legislation relating to SLAs. However, the proposed amendments to the federal tax legislation, for the purposes of the provisions applicable to the dividend refund or for the purposes of Part XIII tax, will not be incorporated because Québec's tax system does not contain corresponding provisions.

Moreover, these changes to Québec's tax system will be adopted only after any federal law arising from the retained measures is assented to, taking into account technical amendments that might be made prior to such assent. These amendments will apply on the same dates as those for the purposes of the federal amendments to which they are harmonized.

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67 This Notice of Ways and Means Motion was followed by the tabling of Bill C-10, *An Act to amend the Income Tax Act, including amendments in relation to foreign investment entities and non-resident trusts, and to provide for the bijural expression of the provisions of that Act*, 39th Parl., 2nd Sess., Canada, 2007. This bill, which included the legislative amendments covered by this announcement, was passed by the House of Commons October 29, 2007, but not by the Senate. In the March 4, 2010 Budget Speech, the Minister of Finance of Canada confirmed the government's intention to implement certain tax measures announced earlier, including those covered by this announcement.

68 I.e. the units of mutual fund trusts listed on a stock exchange.

3. MEASURES RELATING TO CONSUMPTION TAXES

3.1 Collection and remittance of the tax on insurance premiums in respect of replacement insurance

Under the tax on insurance premiums (TIP) system, the tax applicable to a damage insurance premium must be collected at the same time as the premium by the person who receives it in the first place from the insured, and that person is generally responsible for remitting the TIP thus collected to Revenu Québec. This tax is equal to 9% of the premium, except for an automobile insurance premium in which case it is 5%.

On March 27, 2009, the Autorité des marchés financiers announced that the motor vehicle replacement guarantee offered by motor vehicle dealerships, on the sale or long-term lease of a new or used motor vehicle, was an insurance product that would be subject to its oversight.

Consequently, as of August 1, 2010, offering existing replacement guarantee will no longer be allowed. This type of guarantee will be replaced by a replacement insurance policy available exclusively through the network of insurance brokers and agents, as well as through distributors authorized to offer this product under the Act respecting the distribution of financial products and services,[69] i.e. essentially motor vehicle dealerships.

Accordingly, the TIP system will be changed to require persons authorized by the Act respecting the distribution of financial products and services to distribute replacement insurance to register under the TIP system and collect the 5% tax applicable to premiums they receive as of August 1, 2010 and remit it to Revenu Québec.

3.2 Clarification relating to farm machinery covered by certain fuel tax relief measures

The fuel tax system stipulates that persons whose principal occupation is farming are exempt from the tax or are entitled to a refund of the tax in respect of coloured fuel oil or gasoline used to supply a farm machinery engine respectively, provided such machinery is used for farming work.

The fiscal policy leading to the implementation of these fuel tax relief measures applicable to farm machinery was designed to grant tax assistance to farmers.

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69 R.S.Q., c. D-9.2.

However, as the legislative provisions stipulated in that regard are currently worded, contractors who principally do farming work for others (contracts of enterprise) without operating a farm themselves can claim that their principal occupation is farming, and thus benefit from relief measures intended solely for farmers, contrary the wishes of the government in this matter.

Accordingly, to remove any ambiguity, these legislative provisions will be amended to stipulate, in a declaratory manner, that the tax exemption on coloured fuel oil and the gasoline tax refund stipulated in regard to a farm machinery apply only while such machinery is used for farming work and provided that the principal occupation of the consumer of such fuel is to carry out farming, in relation to an immovable which he owns or leases.